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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>TARAY BROWN,<br><br>Defendant and Appellant. | B210689<br><br>(Los Angeles County<br>Super. Ct. No. TA087913) |

APPEAL from a judgment of the Superior Court of Los Angeles County, David Sotelo, Judge. Affirmed.

Lynette Gladd Moore, under appointment by the Court of Appeal, for Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Scott A. Taryle and Beverly K. Falk, Deputy Attorneys General, for Plaintiff and Respondent.

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Taray Brown appeals from the judgment entered after a jury convicted him on one count of aggravated assault. Brown contends the evidence was insufficient to support the jury's finding the assault had been committed by means of force likely to produce great bodily injury. He also contends the trial court deprived him of his constitutional right to an impartial jury by improperly restricting voir dire and refusing to dismiss a potentially biased juror for cause. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

Brown, who had been an honor student and football player while in high school, began acting strangely following his June 2005 graduation. In October 2006 Brown was diagnosed with schizophrenia. On November 30, 2006, concerned about his continuing inappropriate behavior and refusal to take the medication prescribed for him, Brown's parents took him to the psychiatric emergency room at Harbor/UCLA Medical Center. During a preliminary intake interview with a nurse, Brown seemed cooperative and responded appropriately, but then wandered out of the waiting room. Brown's father went to find him, so the intake process could be completed. The resident physician on call, Dr. Ashley Clark, entered the waiting room and spoke with Brown's mother.

When Brown and his father returned to the psychiatric emergency room, Dr. Clark directed her questions to Brown. Brown was unresponsive and stared vacantly at her. As Brown's parents sat down in the waiting room chairs, Dr. Clark sat on the arm of a chair. Dr. Clark continued to ask questions; Brown did not sit down or respond. Instead, he began to move toward Dr. Clark, who became uneasy and stated loudly, "What's going on right now?" When Dr. Clark raised her voice, Brown reached down and grabbed her legs, pulling her from the chair and throwing her to the floor where she landed on her buttocks. As Dr. Clark fell onto the linoleum floor, Brown straddled her, grabbed her scrub pants and yanked them down below her hips, ripping the right rear pocket. The string securing Dr. Clark's pants prevented them from being pulled down further although a portion of her underwear was exposed. Brown continued to hold Dr. Clark down and, according to Dr. Clark, attempted to loosen the belt to his trousers. Dr. Clark, who was screaming for help, feared Brown intended to rape her. Brown's father and the

nurse tried to pull Brown off Dr. Clark but were unable to do so. The nurse then ran to press an emergency button to summon help. As hospital police and employees responded, Brown's father pulled Brown away from Dr. Clark and forced him to the ground. During the attack, Brown made no effort to strike Dr. Clark while he held her down; and she suffered no physical injury.

Responding police officers took Brown into custody and interviewed Brown's parents, Dr. Clark and the nurse. According to the officer who interviewed Dr. Clark, she was very frightened and was shaking and crying. Brown himself, in the course of being advised of his constitutional rights, told another officer the voices in his head had told him to attack Dr. Clark. One of the officers noticed Brown's belt was loosened. However, Brown's parents testified Brown never loosened his belt during the attack. Although he later denied it at trial, Brown's father acknowledged to one of the officers the assault had been sexual in nature and Brown had done something similar in the past.

Brown was charged by information with assault with intent to commit rape or other sexual offense (Pen. Code, § 220);[1] assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(1)); and attempted forcible rape (§§ 664, 261, subd. (a)(2)).[2] Brown pleaded not guilty by reason of insanity and was tried in a bifurcated proceeding.

In the guilt phase Brown was acquitted by the jury of assault with intent to commit rape, but convicted of assault by means of force likely to produce great bodily injury. Brown waived a jury trial on the insanity phase. Based on the reports of four psychiatrists, the court found he had not been sane at the time of the commission of the offense and had not yet recovered his sanity (§ 1026).[3] He was committed to Patton State Hospital for a period not to exceed four years, the maximum state prison sentence for the

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1 Statutory references are to the Penal Code unless otherwise indicated.

2 The third count was dismissed at trial pursuant to section 1385.

3 The insanity finding is not an issue in this appeal.

aggravated assault conviction. Brown's motion to reduce the conviction to misdemeanor simple assault was denied.

## DISCUSSION

1. *Substantial Evidence Supports Brown's Conviction for Assault by Means of Force Likely To Produce Bodily Injury*

Conceding the evidence supports a conviction for simple assault, Brown argues that evidence is insufficient to sustain the jury's finding he committed an aggravated assault—that is, his attack on Dr. Clark involved the use of force likely to produce great bodily injury within the meaning of section 245, subdivision (a)(1). Even though Dr. Clark suffered no physical injuries, the evidence amply supports Brown's conviction of the more serious offense.[4]

"Section 245, subdivision (a)(1), punishes assaults committed by the following means: 'with a deadly weapon or instrument other than a firearm,' or by 'any means of force likely to produce great bodily injury.'. . . [B]ecause the statute focuses on *use* of a deadly weapon or instrument or, alternatively, on force *likely* to produce great bodily injury, whether the victim in fact suffers any harm is immaterial. [Citation.] That the use of hands or fists alone may support a conviction of assault 'by means of force likely to produce great bodily injury' is well established." (*People v. Aguilar* (1997) 16 Cal.4th

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[4] To assess a claim of insufficient evidence in a criminal case, "we review the whole record to determine whether *any* rational trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] 'Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]' [Citation.] A reversal for insufficient evidence 'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support"' the jury's verdict." (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

1023, 1028.) "While . . . the results of an assault are often highly probative of the amount of force used, they cannot be conclusive.'" (*People v. McDaniel* (2008) 159 Cal.App.4th 736, 748 (*McDaniel*).) "'"The issue, therefore, is not whether serious injury was caused, but whether the force used was such that it would be likely to cause it."'" (*Ibid.*; see *Aguilar*, at p. 1035 ["'[a]ll aggravated assaults are ultimately determined based on the force likely to be applied against a person'"].)

"Great bodily injury is bodily injury which is significant or substantial, not insignificant, trivial or moderate." (*People v. Armstrong* (1992) 8 Cal.App.4th 1060, 1066; see *McDaniel, supra,* 159 Cal.App.4th at p. 748.) Whether, for instance, a fist used in striking a person would be likely to cause great bodily injury "is to be determined by the force of the impact, the manner in which it was used and the circumstances under which the force was applied." (*McDaniel,* at pp. 748-749.) "'[T]he question of whether or not the force used was such as to have been likely to produce great bodily injury, is one of fact for the determination of the jury based on all the evidence, including but not limited to the injury inflicted.'" (*Armstrong,* at p. 1066.)

Although Dr. Clark was not physically hurt during Brown's attack, a jury could reasonably conclude the force used by Brown was sufficient under the circumstances to have caused great bodily injury. Brown reached down and pulled Dr. Clark's legs, flinging her to the floor. Had Dr. Clark's head struck the edge of a table or the hard linoleum floor itself, a serious injury easily could have resulted. (See, e.g., *People v. Conley* (1952) 110 Cal.App.2d 731, 733, 737 [forcible collision with hard surface supports conviction for aggravated assault].) Indeed, one witness likened the attack to a football tackle. Of course, neither Brown, who significantly outweighed Dr. Clark, nor Dr. Clark was wearing protective gear at the time.

In addition, while there is no indication Brown struck Dr. Clark with his fist or open hand, the force he used was sufficient to restrain Dr. Clark against her will despite her vigorous struggles. Under these circumstances, there was sufficient evidence for the jury to conclude Brown had assaulted Dr. Clark with force likely to produce great bodily

injury. (See *People v. Bolin* (1998) 18 Cal.4th 297, 331 [reversal unwarranted unless "'under no hypothesis whatever'" is evidence sufficient to support conviction].)

2. *The Trial Court's Rulings During Voir Dire Did Not Exceed Its Discretion*

"The right to voir dire the jury is not constitutional, but is a means to achieve the end of an impartial jury." (*People v. Ramos* (2004) 34 Cal.4th 494, 512.) As long as the essential elements of a jury trial are preserved, including impartiality, the Legislature may impose reasonable regulations or conditions on the right to a jury trial. (*Id.* at p. 513.)

The court is required to conduct the initial voir dire of prospective jurors in criminal cases. (Code Civ. Proc., § 223.) Upon completion of this preliminary examination, "counsel for each party shall have the right to examine, by oral and direct questioning, any or all of the prospective jurors. The court may, in the exercise of its discretion, limit the oral and direct question of prospective jurors by counsel. The court may specify the maximum amount of time that counsel for each party may question an individual juror, or may specify an aggregate amount of time for each party, which can then be allocated among the prospective jurors by counsel . . . ." (Code Civ. Proc., § 223.) "The trial court has discretion to limit voir dire, and the court abuses that discretion, warranting reversal of a conviction on appeal, only when its decision falls outside the bounds of reason [citation] resulting in a 'miscarriage of justice.'" (*People v. Navarette* (2003) 30 Cal.4th 458, 486; see Code Civ. Proc., § 223.)

Brown contends the trial court deprived him of his right to an impartial jury by conducting voir dire through questions directed to an entire courtroom of prospective panelists, thus limiting his counsel's ability to evaluate individual answers, and then improperly restricting his counsel's ability to question prospective jurors whose responses suggested bias. Brown's contention lacks merit.

Group voir dire is a reasonable and acceptable procedure, even in capital cases. (See, e.g., *People v. Carter* (2005) 36 Cal.4th 1215, 1249-1252.) In this case the trial court utilized the "struck jury" method of jury selection: A large initial panel of prospective jurors was seated in the courtroom and questioned for bias or other factors that might exclude them for cause. (See *People v. Avila* (2006) 38 Cal.4th 491, 537.)

Because this practice allows a court to efficiently question a large number of prospective jurors, it has become increasingly common. (See, e.g., Wegner et al., Cal. Practice Guide: Civil Trials and Evidence (The Rutter Group 2009) ¶¶ 5:160 to 5:163, p. 5-34; see also *Carter*, at p. 1251 ["'it is the duty of the trial judge to restrict the examination of the prospective jurors within reasonable bounds so as to expedite the trial'"].)

The trial court in this case was well aware of the need to safeguard Brown's right to an impartial jury, while still attempting to control the proceeding and select a jury without wasting time. When Brown's counsel complained of difficulty in viewing all of the prospective jurors, the court allowed him to sit in the well of the courtroom to better view individual reactions and responses. After the court concluded its questioning, in keeping with the requirements of Code of Civil Procedure section 223, it allowed Brown's counsel 45 minutes (extended from the court's originally stated limitation of 15 minutes) to question prospective jurors on issues relating to cause for exclusion. Brown's counsel utilized the time to ask the entire group questions about bias and violence and to direct several pointed questions to individuals,[5] ending with a series of inquiries directed toward perceptions of schizophrenia. He then sought to ask individual panelists about media portrayals of schizophrenia. At this point the court balked: "Many of these questions . . . appear[] not to be going to cause, or if they [are] it is taking too long to get there. . . . But in terms of asking people about the[ir] experience and [television] on schizophrenia or what they think or know about schizophrenia, . . . I am going to ask you not to go into those areas. You have exceeded your time. . . . I don't want you to ask them what they think they know about schizophrenia. If you want to ask them whether they can listen to and follow the opinions of the doctors, the medical people and set aside what you think from [television], you can ask them that."

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[5] On at least two occasions Brown's counsel sought to inquire about the details of a prospective juror's involvement with a violent incident. The court cautioned him to avoid seeking details relating to the individual's experience or comparing it to the facts of Brown's case, asking him instead to focus on the impact of that experience on the individual's ability to be an impartial juror.

Following this exchange, Brown's counsel concluded his questioning, as did the People; and the court conducted a short hearing on challenges for cause. The court granted Brown's challenge to several individuals identified by Brown as potentially biased. However, the court denied Brown's challenge to prospective juror No. 38, whose mother suffered from schizophrenia.[6]

The court then requested the parties state their peremptory challenges. As counsel exercised their peremptories, individuals seated in the jury box were excused and the next prospective jurors in line were seated in their place. Immediately before prospective juror No. 38 was seated in the box, Brown's counsel exercised his final peremptory, thus leaving her on the jury. Brown renewed his challenge for cause; the court denied the renewed challenge.

The trial court permitted adequate questioning of prospective jurors. The limitations placed by the court on the scope and duration of voir dire by Brown's counsel were reasonable. (See *People v. Carter, supra,* 36 Cal.4th at p. 1251 [voir dire time limit reasonable when parties had opportunity to elicit information on the fitness of prospective jurors and court allowed parties to submit follow-up questions]; *People v. Avila, supra,* 38 Cal.4th at p. 536 [federal constitution "'does not dictate a catechism for *voir dire,* but only that the defendant be afforded an impartial jury'"].) The failure of Brown's counsel to reserve a peremptory for prospective juror No. 38 was a matter of tactical judgment, not a flaw in the selection procedure employed by the court. (See *Avila,* at p. 538

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[6] During questioning by the court, prospective juror No. 38 disclosed her mother had suffered from manic depression and schizophrenia and said it was difficult growing up with her. When asked whether she could still follow the evidence in the case, she responded, "I will do my best." The court then stated, "That is what we're asking you, do your best without being prejudiced or biased. That is what we're looking for. Yes?" She then answered, "I guess." Brown's counsel did not question her further. On this record the court's denial of Brown's challenge for cause was not an abuse of discretion. (See *People v. Ledesma* (2006) 39 Cal.4th 641, 675 ["'If the prospective juror's statements are conflicting or equivocal, the court's determination of the actual state of mind is binding. If the statements are consistent, the court's ruling will be upheld if supported by substantial evidence.'"].)

["[a]lthough knowledge of the composition of the entire panel can be relevant to the exercise of a peremptory challenge against an individual juror, the fact that a particular procedure used might have made exercising initial peremptory challenges less informed does not in itself require reversal"].) There was no abuse of discretion.

**DISPOSITION**

The judgment is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

JACKSON, J.